IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6211 OF 1999

Shri. Ramchandra Govindrao Gaidhani, R/o. Unmash, Dr.Ambedkar Road, Nasik Road, Nasik.) ..PETITIONER.

Vs.

1. Union of India, through the General Manager, Central Railway, Bombay V.T., Bombay-400 001.)

2. Divisional Railway Manager, Central Railway, Bhusaval.)

3. The State of Maharashtra.) ..RESPONDENTS.

Mr.K.S.Bapat with Sachindra Shetye, Advocate for the Petitioner.

Mr.Suresh Kumar, for Respondent-Union of India.

CORAM : SMT.RANJANA DESAI AND SMT.V.K.TAHILRAMANI,JJ.

Date of Reserving the judgment : 31st August,2006

Date of Pronouncing the judgment: 18th Sept.,2006

ORAL JUDGMENT : (PER SMT.V.K.TAHILRAMANI,J.)

1. In this Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner

assails the judgment of the Central Administrative Tribunal, Mumbai Bench, Mumbai dated 14.12.1998, whereby the Tribunal dismissed the Original Application No.413 of 1997 preferred by the petitioner.

2. The petitioner was dismissed by an order dated 15.10.1990 consequent to disciplinary proceedings. Against the said order, he had filed an appeal and the Departmental Appellate Authority rejected the said appeal. The petitioner, therefore, approached the Tribunal in the above mentioned Original Application. The Tribunal after considering the enquiry proceedings, the findings of the enquiry officer and the rival contentions of the parties held that the order of dismissal did not suffer from any infirmity and the petitioner was rightly awarded the punishment of dismissal.

3. The petitioner was in the employment of Railway from 1956 as a Driver ‘A’ grade in Bhusawal Division of the Central Railway. On 25.1.1990, the petitioner was driving passenger train No.1354 UP. Due to careless and negligent driving of the petitioner, he passed the UP Home Signal of Niphad Station in danger

position and side collided with Down DTO Jumbo Goods rake. As a result of the said collision, damage of Rs.2,88,000/- was caused to the coaches, wagons and loco of the train. The petitioner was issued a charge-sheet on account of the said accident alleging violation of GR 3.78(i), GR.380, SR 80(1)(a), GR 4.22(2), GR 4.08 and SR 4.22-1. The petitioner was also charged of committing serious lapses of safety and very careless and negligent driving. The petitioner had denied the charges and, therefore, a domestic enquiry was conducted and on the basis of the findings recorded by the enquiry officer holding that the charges were duly proved, the petitioner is awarded punishment of dismissal.

4. While dismissing the departmental appeal, the appellate authority concurred with the findings of the enquiry officer. The appellate authority was satisfied that the enquiry conducted was in keeping with the principles of natural justice and did not violate the service rules. The punishment of dismissal was found to be just and proper; and therefore did not suffer from any infirmity so as to cause interference.

5. Before the Central Administrative Tribunal, the order of dismissal was challenged on the following grounds, namely :

(a). non supply of the demanded documents;

(b). enquiry was conducted by an officer junior in rank as compared to the members of the fact finding committee which had also undertaken a preliminary investigation and, therefore, the junior officer who acted as the enquiry officer was likely to be influenced;

(c). some of the defence witnesses were not permitted to be examined by the enquiry officer;

(d). the findings of the enquiry officer were perverse;

(e). the chargesheet was issued by an officer who was not competent to impose the punishment; and

(f). the charge that he was negligent and careless while discharging his duties did not constitute a misconduct and that punishment imposed is disproportionate to the charge.

6. The Tribunal held that the chargesheet was issued by the Senior Divisional Electrical Engineer while the order of dismissal was passed by the disciplinary authority i.e. the Divisional Railway Manager and this was in compliance of Rules 8 & 10 of the Railway Servants (Discipline & Appeal) Rules, 1968.

7. Mr.Bapat, the learned counsel for the petitioner contended that as the enquiry was conducted by an officer junior in rank as compared to the members of the Fact Finding Committee which had undertaken a preliminary investigation, in such case, the reports of the enquiry officer could not be relied upon as the junior officer would always be influenced by the findings of the Fact Finding Committee. Mr.Suresh Kumar, the learned counsel for the Respondent on the other hand submitted that the

report of the enquiry officer clearly shows that he has independently applied his mind and he has not been influenced by the findings of the Fact Finding Committee. Undoubtedly, the members of the Fact Finding Committee were senior officers and some enquiries were also conducted by the Commissioner of Railway Safety. These reports became basis to proceed against the delinquent employee and the enquiry officer who has to record his findings into the charges levelled against such an employee is required to undertake the fact finding exercise. Such an enquiry officer conducting the departmental enquiry need not be of the same rank or higher rank as compared to the initial Fact Finding Committee. The enquiry cannot be vitiated on this ground, more so, when such initial report of the committee only deals with prima facie case.

8. Mr.Bapat, the learned counsel for the petitioner submitted that though the petitioner had made a request for documents which were very vital for the petitioner to effectively represent his case, the said request was rejected. On the other hand, Mr.Suresh Kumar submitted that except two documents which were found to be not relevant, all other

documents were supplied to the petitioner. Hence, the petitioner cannot make capital of the fact that he was not supplied the documents, for which he had made a request. As regards the non-supply of documents, it is well settled that the documents demanded must be shown to be relevant and such denial has caused prejudice to the delinquent. Most of the documents demanded by the petitioner were supplied to him. There is correspondence to that effect, which shows that most of the documents demanded were supplied to the petitioner. The enquiry officer in respect of two documents held that they were not relevant and, therefore, rejected the request. Even before the Tribunal, the petitioner could not demonstrate that the denial of these documents caused prejudice to him in defending his case before the enquiry officer. The Tribunal rightly referred to the judgment of the Supreme Court in the case of **T.N. Vs. Thiru K.V.Perumal & Ors.** reported in **(1996) 5 SCC 474**. In the said decision the Supreme Court observed that the applicant has to establish prejudice caused on account of non supply of documents. In the present case, the applicant has not made any submission to indicate as to how he has been prejudiced. Thus, a mere submission of non

supply of documents cannot vitiate the order of punishment.

9. Now coming to the findings of the enquiry officer, it must be noted that apart from the petitioner, Mr.Sudhakar Eknath, Assistant Driver to the petitioner has also been examined as P.W.3. In addition, the driver of the goods-train with which the petitioner collided, is also examined as a witness. The case against the petitioner is that he has let an unauthorised person i.e. Mr.M.V. Kharote travel in the cabin of the train. Before the accident took place, the petitioner was chatting with Mr.M.V. Kharote and he ignored all the signals. The fact that the petitioner allowed Mr.Kharote to travel in the cabin has been admitted by the petitioner in his answer to question No.6. The said fact has also been corroborated by Mr.Sudhakar Eknath. The further case against the petitioner is that he was busy chatting with Mr.Kharote on account of this he was inattentive and did not apply the brakes in time, due to this the accident was caused. It was contended by Mr.Bapat that the petitioner could not apply the brake as it was faulty. Mr.Bapat contended that when the train is running a vacuum is created on account

of the peculiar machinery required to run the train. On account of this vacuum various things which are lying on the tracks like hammers, stones etc. get sucked into the machinery and this affects the brake. On account of this, even if the brakes are applied, the brakes would not work. In answer to this contention, Mr.Suresh Kumar submitted that prior to the petitioner operating the train, another driver was operating the said train for a distance covering 23 stations. No fault was reported by the earlier driver. Thereafter, the petitioner started operating the train and the train had been checked at the earlier stations and no fault was found in the brake system of the train. We find that the material on record shows that the brake was in working condition. Moreover, we have noticed that the petitioner in his statement has admitted that he did not apply the brakes. It is his case that on seeing the approaching train he get a mental block, however it is seen that immediately after the accident, when the petitioner was medically examined he was found in a fit mental and physical condition. The material on record clearly shows that the petitioner was careless and negligent in his duty in violation of the rules in operating the train, which has resulted in a

serious accident, this clearly amounts to misconduct.

10. The charge against the petitioner was that he was driving the train much beyond the speed that he was supposed to drive the train in that particular sector i.e. the petitioner was driving the train at 100 K.M.P.H., which was not permissible in that section. The Speedograph and Technograph Meter of the train also show that the train was running at the speed of 100 K.M. per hour at the relevant time. The train of the petitioner reached the accident spot within four minutes of leaving the last station. Mr.Bapat submitted that speedograph and technograph could be faulty and on account of this the speedograph showed that the train was being run at 100 K.M.P.H.. In support of this contention, Mr.Bapat has placed reliance on the evidence of Witness No.21 Shri.G.C.Nigam, S.D.I., Nashik. Mr.Bapat has placed reliance on the answer to Question No.8, wherein Mr.Nigam has stated that the speedometer may be recording wrong speed. However, we find it necessary to see the entire answer as well as question No.8, which reads as under :

Q.8. If the driver is going with 73 to 75

KMPH speed and maintaining the prescribed running times, speedometer is recording 100 KMPH, what it indicates ?

Ans. It is quite possible that the driver may be picking up 100 KMPH in the section or else the speedometer may be recording wrongly speed.

. In our view, the answer to this question given by witness Mr.Nigam does not in any way indicate that the speedometer of the train was faulty. After going through the evidence on record we find that there is no material to show that the speedograph or technograph were faulty. Moreover, in support of the charge that the petitioner was driving the train at a very high speed i.e.100 K.M.P.H., a dry run was undertaken and it was noted that the accident spot could be reached within four minutes from the last station, only if the train was running at a speed of 100 K.M.P.H. On the other hand, the maximum permissible speed on that particular section was 73 K.M.P.H.. This shows that the petitioner was driving at a much higher speed than the permissible speed.

11. It is the contention of the petitioner that his defence witnesses were not allowed to be examined. In this respect, the Tribunal has noted from the enquiry proceedings that these three witnesses were Mr.H.P.Chitnis, Mail Driver, Shri.T.T.Bundel, retired ATLC and Shri.Naik, TXR Kalyan and when the competent authority called upon the petitioner to show as to how they were relevant witnesses, he could not justify the same. The evidence of the department has been rightly appreciated by the enquiry officer and the Tribunal noted that it was not permissible to reappreciate the evidence adduced in the departmental enquiry. This position in law has been well settled by a catena of decisions and more particularly the judgment of the Supreme Court in the case of **B.C.Chaturvedi Vs. Union of India and Ors.** reported in **(1996) 32 ATC 44**; wherein it was noted thus :

> ".....The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of

> statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

. Thus, we find no infirmity in the view taken by the Tribunal that the findings recorded by the enquiry officer were not perverse and the charges were duly proved.

12. Before the Tribunal as well as us, it has been urged that the appellate authority passed a non-speaking order while rejecting the petitioner's appeal. Having regard to the reasonings set out in the said order, we have no doubt that the Tribunal rightly recorded its satisfaction about the said order by a detailed order covering all issues raised in the appeal. In this regard, the department rightly relied upon the judgment in the case of **State Bank of India, Bhopal Vs.. S.S.Kaushal** reported in **1994 Supp 2 SCC 468**, wherein the Supreme Court held that "In view of the fact that it was an order of affirmance, we are of the opinion that it was not

obligatory on the part of the appellate authority to say more than this as the order as it shows application of mind and the order cannot be characterised as a non-speaking order." The appellate authority had stated that it considered the relevant grounds of appeal and on considering the facts of the case came to the conclusion that there was no substance in the appeal. The same is the situation in the present case.

13. On the last issue of disproportionate punishment, Mr.Bapat submitted that in other cases where more serious accidents have taken place which has also entailed loss of life, less severe punishment came to be awarded to the drivers. Mr.Suresh Kumar on the other hand submitted that the facts relating to the other cases cannot be equated to the facts in the present case. In support of the punishment awarded, the tribunal has stated that the gravity of the charge will depend upon the contribution of the delinquent employee in causing the accident due to passing of the signal in danger and, therefore, two cases of accident cannot be compared for deciding the quantum of punishment. The petitioner was charged for a specific act of accident

namely allowing an unauthorised person to travel in the cabin, very negligent and careless driving without responding to the signal given and driving the train at a very high speed. It is well settled that while considering the challenge to the punishment of dismissal, it would be relevant to examine the past record of service of the delinquent. The respondents have placed on record the service sheet which shows that the petitioner was punished on 21 occasions and at least five of them are concerning the negligent driving of train. They are causing derailment of engine on 9.4.1961, collision between two engines on 9.12.1964, skidding of all the wheels of loco on 3.1.1983, derailment of loco on 3.5.1983, and collision with box wagon on 6.2.1986. It is clear that the petitioner's service record was far from being satisfactory. It is equally well settled that imposing of a particular punishment is within the managerial powers of the disciplinary authority and the Tribunal cannot sit in Appeal over the quantum of punishment decided by the disciplinary authority. In the case of **Punjab State Civil Supplies Corpn. Ltd., Chandigarh & Ors. Vs. Narinder Singh Nirdosh,** reported in **(1997) 5 SCC 62**, the Supreme Court stated thus :

> "In view of the settled legal position that the disciplinary authority, on the basis of the magnitude of the misconduct, is empowered to impose the punishment appropriate to the situation, the High Court is unjustified in interfering with the punishment of reversion, as most lenient view was taken by the Government. The nature of the punishment depends upon the magnitude of the misconduct. Since the misconduct in question is a grave one and the punishment of reversion itself being a very very lenient one, the High Court is wholly incorrect in reducing the punishment which is not at all warranted in Law."

14. We are, therefore, satisfied that the concurrent findings recorded by the appellate authority as well as the Central Administrative Tribunal regarding the legality, propriety and justifiability of the order of dismissal, do not suffer from any error apparent on the face of record and, therefore, the impugned judgment of the Tribunal calls for no interference. Hence, the Petition fails and the same is hereby dismissed.

15. Mr.Suresh Kumar, the learned counsel for the respondent makes a statement that all the dues, if not paid earlier, will be paid as per law to the petitioner within six weeks from today. The said

statement is accepted.

16. Petition is disposed of.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]